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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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WATTS HOFFMANN CO., L.P.A.
1100 Superior Avenue, Ste. 1750
Cleveland, OH 44114

EXAMINER

BUI, LUAN KIM

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 06/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/775,009

Applicant(s)

RICH, RONALD

Examiner

Luan K. Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/12/04</u> . | 6) <input type="checkbox"/> Other: ____. |

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4 and 20-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrases “wherein rotation of the handle of a tool” in claim 4, “wherein rotation of the handle of a plunger” in claim 24, “the handle extends through ...” in claims 31 and 36 define the holder in reference to a tool having an implement and a handle which is undefined and has not been positively claimed rendering the claims vague and indefinite because it is not clear what structural limitations applicant intends to encompass with such language. In claim 20, the phrases “said first member” and “said second member” lack proper antecedent basis.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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4. Claims 1-7, 20-24, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Alissandratos (4,033,650; hereinafter Alissandratos'650). To the extent that the Examiner can determine the scope of the claims, Alissandratos'650 discloses a tool holder (10) comprising a first shell (24) having an inner surface defining a receptacle sized to house a tool (11, 16) and an outer surface defining a first opening and a second shell (18) rotatably engaged to the first shell and having an outer surface defining a second opening. The second shell is rotatable between a first position with the first opening and the second opening are cooperatively aligned to provide access to the receptacle and a second position with the outer surface of the second shell and the first opening are cooperatively aligned to prohibit access to the receptacle.

As to claims 5 and 6, Alissandratos'650 discloses the first shell comprises an outer shell (vertical portion in Figure 4) mounted to a base (24) and the base having a plurality of bearing members (21) contiguous with the second shell and the bearing members are disk-shaped.

As to claim 20, Alissandratos'650 discloses the second housing is rotatable with respect to the first housing.

5. Claims 1-4 and 20-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Ramsey et al. (5,984,100; hereinafter Ramsey'100). To the extent that the Examiner can determine the scope of the claims, Ramsey'100 discloses a tool holder (10) comprising a first shell (11-13) having an inner surface defining a receptacle sized to house a tool (16) and an outer surface defining a first opening and a second shell (14) rotatably engaged to the first shell and having an outer surface defining a second opening. The second shell is rotatable between a first position with the first opening and the second opening are cooperatively aligned to provide

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access to the receptacle and a second position with the outer surface of the second shell and the first opening are cooperatively aligned to prohibit access to the receptacle.

As to claim 20, Ramsey'100 discloses the second housing is rotatable with respect to the first housing.

6. Claims 1-7 and 20-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Alissandratos (4,317,605; hereinafter Alissandratos'605). To the extent that the Examiner can determine the scope of the claims, Alissandratos'605 discloses a tool holder (10) comprising a first shell (24) having an inner surface defining a receptacle sized to house a tool (11, 16) and an outer surface defining a first opening and a second shell (18) rotatably engaged to the first shell and having an outer surface defining a second opening. The second shell is rotatable between a first position with the first opening and the second opening are cooperatively aligned to provide access to the receptacle and a second position with the outer surface of the second shell and the first opening are cooperatively aligned to prohibit access to the receptacle.

As to claims 5 and 6, the first shell comprising an outer shell (vertical portion 10 in Figure 3) mounted to a base (24) and the base having a plurality of bearing members (21, 28) and the bearing members are disk-shaped.

As to claim 20, Alissandratos'605 discloses the second housing is rotatable with respect to the first housing.

7. Claims 1, 8, 9, 20, 21, 29 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Gibbs (5,924,566). To the extent that the Examiner can determine the scope of the claims,

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Gibbs discloses a tool holder (2) comprising a first shell (6, 8, 10) having an inner surface defining a receptacle sized to house a tool and an outer surface defining a first opening and a second shell (20) rotatably engaged to the first shell and having an outer surface defining a second opening. The second shell is rotatable between a first position with the first opening and the second opening are cooperatively aligned to provide access to the receptacle and a second position with the outer surface of the second shell and the first opening are cooperatively aligned to prohibit access to the receptacle.

As to claim 8, Gibbs discloses the first shell comprises at least one stop tab (60).

As to claim 9, Gibbs discloses a portion (28A) of the first opening and a portion (28B) of the second opening form an aperture that contains a handle of the tool.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 31-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibbs (5,924,566) in view of Alissandratos (4,033,650). Gibbs discloses a plunger storage device (2) comprising a container (6, 8, 10) having a container cavity formed therein, a container top opening (28A) defined by a container top edge, and a container side wall opening (on wall 6) defined by a container side edge and a sidewall (20) slidably (direction 70) engaged with the container and moveable from an open position to a closed position. A handle of the plunger

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extends through and above the container top opening when the plunger is stored within the cavity and the sidewall of the container of Gibbs is inherently capable to move between the open and closed positions by rotation of the plunger handle.

To the extent that Gibbs fails to the sidewall being slidably engaged with the container, Alissandratos'650 shows a sidewall (18) is slidably engaged with a container (24). It would have been obvious to one having ordinary skill in the art in view of Alissandratos'650 to modify the sidewall of Gibbs so the sidewall is slidably engaged with the container to use less space during opening of the device.

10. Claims 10-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alissandratos (4,317,605; hereinafter Alissandratos'605) in view of Borger et al. (5,836,322; hereinafter Borger'322). Alissandratos'605 discloses a tool holder (10) comprising a main body having a vertical center axis including an exterior surface defining a planar portion (24) and a shell portion (a vertical portion 10 in Figure 3) with the shell portion defining a first opening, an inner surface defining a tool storage receptacle, a first ring (26) extending inward from the inner surface along a center axis and a rotating member (18) including an implement engaging surface (14), an outer surface defining a second opening and a pin (25) or a second ring (27). The first ring and the second pin are totatably engaged such that the rotating member is rotatable with respect to the main body about the center axis. However, Alissandratos'605 fails to show the pin being a second ring and the main body comprises a dome-shaped with an annular section adjacent to the planar portion and an arcuate section contiguous to the annular section.

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Borger'322 shows a tool holder (10) comprising a dome-shaped main body (24, 28) having a planar portion (28), an arcuate section (a lower portion of lids 24) and annular section (an upper portion of lids (24). It would have been obvious to one having ordinary skill in the art in view of Borger'322 to modify the main body of the holder of Alissandratos'605 so the main body comprises a dome-shaped with an annular section adjacent to the planar portion and an arcuate section contiguous to the annular section for decorative purposes since a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. In re Dailey et al., 149 USPQ 47. Also, the selection of the specific shape for the holder would have been an obvious matter of design choice inasmuch as the resultant structures will work equally well and inasmuch as applicant's specification does not state that using these specific shapes as claimed solves any particular problem or yields any unexpected results.

It would also have been obvious to one having ordinary skill in the art in view of Alissandratos'605 to modify the pin so it comprises a second ring to reduce material for manufacture.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. **The fax phone number for the**

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organization where this application or proceeding is assigned is 571-273-8300 for Formal papers and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lkb
June 11, 2006



Luan K. Bui
Primary Examiner
Art Unit 3728